

FEB 11 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Implementation of Sections of)
the Cable Television Consumer)
Protection and Competition Act)
of 1992)

Rate Regulation)

MM Docket No. 92-266

REPLY COMMENTS OF BELL SOUTH

BellSouth Telecommunications, Inc., ("BellSouth")
hereby replies to comments filed in the above-captioned
docket.

- I. RATES FOR CABLE SYSTEMS SUBJECT TO EFFECTIVE
COMPETITION SHOULD BE INCORPORATED INTO A BENCHMARK
FORMULA BASED ON 1986 RATES TO ESTABLISH THE MAXIMUM
PRICE OF THE BASIC SERVICE TIER.

In its comments, BellSouth explained why a benchmark
based on 1986 rates was the most appropriate benchmark
methodology advanced by the Commission for establishing the
reasonableness of basic tier rates of cable systems not
faced with effective competition.¹ As noted in those
comments, the principal advantage of the 1986 benchmark
approach over the other benchmark proposals is that it
reflects the unique characteristics of each individual cable
system.²

¹ Comments of BellSouth at p. 3-10.

² Id., at p. 5-6.

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Comments filed by NCTA raised two concerns with this approach. First, NCTA claims that it would be difficult to identify appropriate adjustment factors to such a benchmark.³ Second, NCTA asserts that a benchmark based on 1986 rates is less likely to accurately reflect competitive rates than an approach that is based on the actual rates of systems subject to effective competition.⁴ For the reasons explained below, neither of these concerns is a valid basis for rejecting the 1986 benchmark approach.

The identification of appropriate adjustments to a benchmark based on 1986 rates is no more difficult than identifying appropriate adjustments to a benchmark based on rates of cable systems subject to effective competition. According to NCTA, a benchmark based on rates of competitive cable systems would require considerable adjustments. For example, NCTA argues that such an approach requires adjustments to account for the divergent number of channels offered by different systems, as well as the possibility of using regression analysis or other statistical techniques to determine variables that might affect a system's costs.⁵ NCTA further claims that adjustments would have to be made to correct for the allegedly artificially low rates of such

³ Comments of the National Cable Television Association, Inc. (NCTA) p. 23.

⁴ Id.

⁵ Comments of NCTA at p. 16-17.

systems.⁶ Moreover, NCTA admits that so little effective competition exists in today's video programming marketplace that there might not be a sufficient number of competitive systems from which to obtain valid benchmark data.⁷ This general paucity of data will significantly increase the need to identify and develop "adjustments" to render such data useful for benchmarking purposes.

Although the limited number of cable systems subject to effective competition would make it difficult to develop a benchmark based upon the use of such data, that data could still be used as an adjustment factor in developing a benchmark based on 1986 rates. In particular, the Commission should examine all cable systems subject to effective competition to determine the relationship between the 1986 rates and the current rates. The Commission should use this data to calculate the average per channel change in basic tier rates since 1986 for all systems subject to effective competition. This factor could then be used to adjust the 1986 rates for individual cable systems to the appropriate 1993 benchmark rate levels. Under this approach, cost factors such as franchise fees, taxes or charges to satisfy franchise requirements to support public, educational and governmental channels would already be reflected in the adjustment factor used to set the adjusted

⁶ Id., at 18-19.

⁷ Id., at p. 17.

1993 benchmark rate. The Commission would still be able to back-out any particular average rate element and use the actual costs of a cable system for that element where such information is available. Cable operators who have higher operating costs than reflected in the adjusted 1993 benchmark would have the option of justifying higher rates through cost-of-service criteria.

The above benchmark formula offers the advantage of more accurately reflecting the unique cost and operational characteristics of each individual cable system. The proposed adjustment factor provides a relatively simple mechanism which recognizes changes in the development of cable systems since 1986. This approach also allows the Commission to satisfy the statutory directive to consider the rates for cable systems, if any, that are subject to effective competition in developing its rate regulations.⁸

II. THE COMMISSION SHOULD USE PRICE CAP REGULATION TO PREVENT UNJUSTIFIED RATE INCREASES AFTER INITIAL RATES HAVE BEEN SET.

Certain cable operators argue that the Commission should not put any restrictions on cable rate increases which do not exceed the maximum benchmark established in this proceeding.⁹ The Commission should reject this argument and apply price cap regulation to all subsequent rate increases for systems not facing effective competition.

⁸ 47 U.S.C. 543(b)(2)(C)(i).

⁹ Comments of NCTA at p. 29-30.

Once a benchmark is established, one cannot presume that any increase in rates not exceeding the maximum benchmark is reasonable and would not exceed the rates that would be charged if such cable system were subject to effective competition. Under this reasoning, if a cable operator's current basic tier rates were twenty-five percent lower than the maximum benchmark rate established by the Commission, the cable operator could immediately increase basic rates by twenty-five percent without any further showing to justify the increase. Such a result is clearly inconsistent with the intent of the Act.

The purpose of benchmark regulation is not to provide cable operators with an excuse to raise basic tier prices. A cable operator would not be able to significantly increase rates overnight in the marketplace if it were faced with effective competition. The Commission should allow subsequent rate increases, but those rate increases should be governed by price caps for the reasons previously explained in BellSouth's comments.¹⁰ Given the absence of effective competition in today's video marketplace, it is reasonable to presume that existing rates are, at a minimum, already fully compensatory.

¹⁰ Comments of BellSouth at p. 10-16.

**III. CABLE OPERATORS SHOULD BE REQUIRED TO UNBUNDLE
EQUIPMENT AND INSTALLATION CHARGES FROM BASIC TIER
RATES.**

NCTA contends that there is no support for the Commission's conclusion that Congress intended for the Commission "to separate rates for equipment and installations from other basic tier rates," in order to "help to establish an environment in which a competitive mandate for equipment and installation may develop."¹¹ NCTA is simply wrong.

Support for the Commission's position can be found in the language of the statute. As explained in the Notice, the Commission's conclusion is consistent with the language of the Cable Act, which requires the Commission to adopt regulations "to promote the commercial availability, from cable operators and retail vendors that are not affiliated with cable systems, of converter boxes and of remote control devices compatible with converter boxes."¹² The Act also requires the Commission to prescribe regulations for establishing the rates of installation and equipment used by subscribers to receive the basic service tier "on the basis of actual cost," which is a different standard from that prescribed for basic tier rates.¹³ These statutory

¹¹ Comments of NCTA at p. 46, Notice at para. 63.

¹² Notice at n.90 (citing 47 U.S.C. Section 544).

¹³ Compare 47 U.S.C. Section 543(b)(2) (governing basic tier rates) with Section 47 U.S.C. Section 543(b)(3) (governing equipment and installation rates).

requirements support the conclusion that such charges must be separate (i.e., "unbundled") from basic tier rates.

The concept of unbundling equipment and installation charges is consistent with the Commission's policies regarding the unbundling of customer premises equipment (CPE) from telecommunication services. For similar reasons, the Commission should not allow cable operators to bundle equipment and installation charges with basic cable rates unless it is also willing to allow telephone companies and other video programming competitors to bundle video CPE with their video transport services. Likewise, the Commission should not allow cable operators to provide video CPE equipment and installation services below cost as part of promotional campaigns unless it also is willing to extend the same right to all other competitors.

IV. CONCLUSION

For the reasons stated, the Commission should reject the arguments of those who contend that a benchmark based on rates of cable systems subject to effective competition will, after appropriate adjustments, result in a more accurate benchmark than one based upon 1986 rates. To the contrary, data on rates of cable systems subject to effective competition should be used as an adjustment factor to arrive at a benchmark based on 1986 rates. The Commission should also reject the arguments of those who want an unfettered right to raise basic tier rates to the

maximum benchmark levels established by the Commission without further rate review or justification. Price cap regulation is an appropriate mechanism to insure future rate increases are consistent with the intent of the 1992 Cable Act. Finally, the Commission should require cable operators to unbundle rates for video CPE and installation from other basic tier rates as indicated by the language and legislative history of the Act.

Respectfully submitted

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February 11, 1993

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I hereby certify that I have this 11th day of February, 1993 serviced all parties to this action with a copy of the foregoing REPLY COMMENTS by placing a true and correct copy of same in the United States mail, postage prepaid, addressed to:

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